

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12546-GAO

THOMAS COOK, MEGAN DRESCH, LAURA GALABURDA,  
JACK GLOVER, DAVID HALL, MONICA HILL, JENNY LYNN  
KOPFSTEIN, JENNIFER MCGINN, JUSTIN PEACOCK, JAMES E.  
PIETRANGELO II, DEREK SPARKS, STACY VASQUEZ,  
Plaintiffs,

v.

DONALD H. RUMSFELD, Secretary of Defense,  
MICHAEL CHERTOFF, Secretary of Homeland Security,  
UNITED STATES OF AMERICA,  
Defendants.

MEMORANDUM AND ORDER

September 5, 2006

O'TOOLE, D.J.

The motion by plaintiff James E. Pietrangelo, II, for reconsideration of the Court's grant of the defendants' motion to dismiss (Dkt. No. 28) is properly considered a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e).

Under Rule 59(e), "a court may alter or amend a judgment based on a "manifest error of law or fact" or newly discovered evidence. . . . [T]he rule 'does not allow a party to . . . advance arguments that could and should have been presented to the . . . court prior to the judgment.'"

Zukowski v. St. Lukes Home Care Program, 326 F.3d 278, 282 n.3 (1st Cir. 2003) (quoting Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997)). Moreover, "the repetition of previous arguments is not sufficient to prevail on a Rule 59 (e) motion." See United States v. \$23,000 in U.S. Currency, 356 F.3d 157, 165 n.9 (1st Cir. 2004).

Thus, to the extent that Pietrangelo seeks to present new arguments that could have been made previously, relief under Rule 59(e) is not warranted. To the extent that he seeks to make a better argument than that which was previously made on points that were raised (which he calls “reframing” the earlier arguments), he would have to show that the judgment, made after consideration of purportedly deficient arguments, rested on a “manifest error of law or fact.” He has not shown that. In the absence of such a showing, the remedy for an erroneous judgment is to be found in appellate review in the ordinary course.

Accordingly, the motion is DENIED.

September 5, 2006

/s/ George F. O’Toole, Jr.

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DATE

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DISTRICT JUDGE